

|                              | <b>CM Casar's Proposed Ordinance 1/19/18</b>   | <b>CM Flannigan's Proposed Ordinance</b>   |
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| <b>Annual Reporting</b>      | No requirement in proposed ordinance   | Requires an annual report to City Council, or the appropriate committee, from the EEO/FHO Administrator by May 31 <sup>st</sup> . The report shall include, but not be limited to, a discussion of the implementation and enforcement of this chapter, including the number and nature of violations, specific violations, industries and occupations with high rates of violations, penalties assessed in the prior year, and the impact on small businesses. The report may also include recommendations for possible improvements to the ordinance.   |
| <b>Effective Date</b>        | <p>Except as provided below, this ordinance takes effect on May ____, 2018.</p> <p>For a violation of Chapter 4-19 that occurs within the first three months 24 after the effective date of this ordinance, the EEO/FHO shall issue a notice to the 25 employer that a civil penalty may be assessed for a violation that occurs at any 26 time after October 1, 2018.</p> | <p>Effective August 1, 2018.</p> <p>During the first twelve months following the effective date the EEO/FHO can do the following:</p> <ul style="list-style-type: none"> <li>• For first violations - only mediate disputes and issue warnings and notices to correct.</li> <li>• For subsequent violations - the administrator may impose the relief and penalties provided in <u>section 4-19-7</u>.</li> </ul> <p>For new employers (excluding chain establishments):</p> <ul style="list-style-type: none"> <li>• First twelve (12) months after the hire date of the employer's first employee are required to provide unpaid sick time but are not required to provide paid sick time.</li> <li>• After twelve (12) months, the employer will be subject to the ordinance providing paid sick time.</li> </ul> |
| <b>Report of Violations</b>  | Must be filed within two years from the date of the violation.   | Must be filed within 365 days from the date of the violation.  |
| <b>Investigation Process</b> | <ul style="list-style-type: none"> <li>• Provides subpoena power to the administrator of the EEO/FHO.</li> <li>• Creates a Class C misdemeanor offense for failing to comply with a subpoena issued.</li> </ul>  | <ul style="list-style-type: none"> <li>• Administrator of EEO/FHO sends a notice of investigation with a request for a written position statement and a request for records or other information.</li> <li>• An employer's failure to provide a position statement or to timely and fully respond to a request for records or any other reasonable request issued by the EEO/FHO creates a rebuttable presumption of a violation and determination of violation.</li> </ul>  |

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| <b>Relief and Administrative Fines</b> | <p>(C) If the EEO/FHO finds after investigation of a timely complaint that a violation of this Chapter has occurred:</p> <ul style="list-style-type: none"> <li>(1) the EEO/FHO shall assess a civil penalty up to \$500 against the employer for each violation of this Chapter, and shall provide written notice of the assessment to the employer; and</li> <li>(2) the EEO/FHO shall seek voluntary compliance from the employer to remedy any violation of this Chapter. If voluntary compliance is not achieved within 10 business days following the employer's receipt of the written civil penalty assessment, the employer shall be liable to the City for the amount of the assessed civil penalty.</li> </ul> | <p>(A) <i>Relief and administrative fines.</i> The administrator may order any appropriate relief for a determination including, but not limited to:</p> <ul style="list-style-type: none"> <li>(3) Reinstatement and back pay.</li> <li>(4) The crediting to an employee of any accrued earned sick time accrued but not credited.</li> <li>(5) An administrative warning, a fine payable to the city of up to two-hundred fifty dollars (\$250.00) for a first offence, or up to five hundred dollars (\$500) for subsequent offences for each day, or portion thereof, a violation of section <u>4-19-17</u>, <u>4-19-18</u>, or <u>4-19-19</u> that has continued following written notice to the employer of such violation with a period of no less than ten (10) business days to comply. Such funds shall be allocated to the EEO/FHO and used to offset the costs of implementing and enforcing this chapter.</li> </ul> |
| <b>Appeal</b>                          | No appeal process in proposed ordinance.  | Establishes an appeal process using an administrative hearing conducted by an administrative law judge for an employee, former employee, or employer within twenty-one (21) days of the determination of a violation.   |
| <b>Civil Enforcement</b>               | Not directly mentioned in proposed ordinance.   | Allows, when needed, the EEO/FHO to refer the action to the city attorney to consider initiating a civil action in a court of competent jurisdiction against an employer, for violating any requirement.  |
| <b>Interest</b>                        | Not directly mentioned in proposed ordinance.   | The EEO/FHO administrator or administrative law judge shall award interest on all amounts due and unpaid at a rate of interest in accordance with state law.  |

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| <b>Determination of Business Size</b>     | Not directly mentioned in proposed ordinance.  | <p>(A) An employer's business size for the current calendar year is based upon the average number of employees per week during the previous calendar year, excluding family members.</p> <p>(B) For a new business, the employer's business size for the current calendar year is based upon the average number of employees per week during the first ninety (90) days after its first employee began work, excluding family members.</p> <p>(C) In determining the number of employees, all persons performing a substantial portion of their work in the city for compensation on a full-time, part-time or temporary basis shall be counted, excluding family members.</p> <p>(D) Employees jointly employed by two (2) employers must be counted by both employers, whether or not maintained on one (1) of the employer's payroll in determining an employer's business size. In those cases in which a professional employer organization is determined to be a joint employer of a client employer's employees, the client employer would only be required to count employees of the professional employer organization, or employees of other clients of the professional employer organization, if the client employer jointly employed those employees.</p> |
| <b>Accrual of Earned Sick Time</b>        | An employer shall grant an employee one hour of earned sick time for every 30 hours worked for the employer.   | Employees accrue a minimum of one (1) hour of earned sick time for every thirty (30) hours worked within the city. Earned sick time shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of earned sick time.   |
| <b>Maximum Amount of Earned Sick Time</b> | An employer is not required to provide more than 64 hours of earned sick time to an employee in a calendar year. All available earned sick time up to 64 hours shall be carried over to the following year. An employer may inform an employee that leave requested in excess of the employee's available earned sick time will not be paid. | Employers with 49 employees or less are not required to accrue in total for any employee more than that employee's average number of hours worked in a typical week. All other employers are not required to accrue in total for any employee more than that employee's average number of hours  |

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|  |   | worked in a typical week multiplied by 1.5.   |
| <b>When Accrual of Earned Sick Time Begins</b>                   | Earned sick time shall accrue starting at the commencement of employment or the date this Chapter is effective, whichever is later.   | Earned sick time under this chapter begins to accrue at the commencement of employment of the employee or this chapter's effective date, whichever is later.  |
| <b>When Employees are Entitled to Access Accrued Earned Sick</b> | An employer shall provide earned sick time for an employee's absence from the employee's scheduled work time if the employee has available earned sick time. An employer may not prevent an employee from using earned sick time for an unforeseeable qualified absence as established in Subsection (D).   | Employees are entitled to use accrued earned sick time beginning 180 calendar days following commencement of their employment. After 180 calendar days of employment, employees may use earned sick time as it is accrued.                    |
| <b>Accrual Process Versus Automatic Access</b>                   | <p>Not directly mentioned in proposed ordinance. But an automatic access policies is acceptable under the ordinance under this section:</p> <p>An employer may provide paid leave benefits that exceed the requirements of this Chapter. This Chapter does not require an employer who makes paid time off available to an employee under conditions that meet the accrual, purpose, and usage requirements of this Chapter to provide additional earned sick time to the employee.</p> | An employer may satisfy this section by providing an employee their max accrual of earned sick time after 180 calendar days has passed from their initial date of employment for use in accordance with the other provisions of this chapter. |

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| <p><b>Uses of earned sick time</b></p> | <p>An employee may request earned sick time from an employer for an absence from the employee's scheduled work time caused by:</p> <ul style="list-style-type: none"> <li>(1) the employee's physical or mental illness or injury, preventative medical or health care, or health condition; or</li> <li>(2) the employee's need to care for a family member's physical or mental illness, preventative medical or health care, injury, or health condition; or</li> <li>(3) the employee's need to seek medical attention or to participate in legal or court ordered action related to an incident of domestic abuse, sexual assault, or stalking involving the employee or employee's family member.</li> </ul> | <p>An employee may use earned sick time for:</p> <ul style="list-style-type: none"> <li>(1) An employee's: <ul style="list-style-type: none"> <li>a. Mental or physical illness, injury, or health condition;</li> <li>b. Need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or</li> <li>c. Need for preventive medical or health care.</li> </ul> </li> <li>(2) The care of a family member: <ul style="list-style-type: none"> <li>a. With a mental or physical illness, injury, or health condition;</li> <li>b. Who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or</li> <li>c. Who needs preventive medical or health care.</li> </ul> </li> <li>(3) An absence due to domestic abuse (including aggravated assault, aggravated sexual assault, assault, dating violence, family violence), sexual assault or stalking of the employee or employee's family member, provided the absence is to: <ul style="list-style-type: none"> <li>a. Seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking;</li> <li>b. Obtain services from a victim services organization;</li> <li>c. Obtain psychological or other counseling;</li> <li>d. Seek relocation due to domestic abuse, sexual assault, or stalking; or</li> <li>e. Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking.</li> </ul> </li> </ul> |
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| <b>Employer Notification of Earned Sick Time</b> | On no less than a monthly basis, an employer shall provide electronically or in writing to each employee a statement showing the amount of the employee's available earned sick time. For the period required for maintenance of records under Title 29, Section 516(a), Code of Federal Regulations, an employer shall maintain records establishing the amount of earned sick time accrued and used by each covered employee.  | Upon request by an employee, the employer must provide, in writing or electronically, information stating the employee's then-current amount of:<br>(1) Accrued earned sick time available to the employee; and<br>(2) Used earned sick time.<br>Employers may choose a reasonable system for providing this notification, including, but not limited to, listing information on each pay stub or developing an online system where employees can access their own information.       |
| <b>Documentation/ Verification Requirements</b>  | An employer may adopt reasonable verification procedures to establish that an employee's request for earned sick time meets the requirements of Subsection (D) for a request to use earned sick time for more than three consecutive work days.  | It is not a violation of this ordinance for an employer to require reasonable documentation that the earned sick time is covered by paragraph (B) for absences of three (3) or more consecutive days in which the employee was scheduled to work.   |
| <b>Compensation Rate for Earned Sick Time</b>    | An employer shall provide an employee with earned sick time that meets the requirements under this Section in an amount up to the employee's available earned sick time. The employer shall pay earned sick time in an amount equal to what the employee would have earned if the employee had worked the scheduled work time, exclusive of any overtime premium, tips, or commissions, but no less than the state minimum wage. | (G) An employer with six (6) or more employees must compensate the employee at the same hourly rate with the same benefits as employee's regular rate of pay for the hours the employee was scheduled to work during the time the employee uses their accrued earned sick time. Compensation is only required for hours that an employee is scheduled to have worked.<br>(H) An employer with five (5) or less employees must allow employees unpaid use of accrued earned sick time. |

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| <p><b>Alternative Models Allowed</b></p> | <p>An employer may provide paid leave benefits that exceed the requirements of this Chapter. This Chapter does not require an employer who makes paid time off available to an employee under conditions that meet the accrual, purpose, and usage requirements of this Chapter to provide additional earned sick time to the employee.</p> | <p><b>§4-19-14. Use of accrued earned sick time.</b><br/>(J) An employer may opt to satisfy the requirements of this Chapter for employees by:</p> <ul style="list-style-type: none"> <li>(1) Agreement with an organization representing at least 25% of the employer's eligible employees under this ordinance that establishes rights and terms for pay and benefits; or</li> <li>(2) Adopting an alternative earned sick time or leave policy that is substantially compliant with this ordinance and approved by the administrator.</li> </ul> <p><b>§4-19-23. No effect on more generous earned sick time policies.</b></p> <ul style="list-style-type: none"> <li>(A) Nothing in this chapter shall be construed to discourage employers from adopting or retaining other leave policies, including accrued earned sick time policies, that provide for greater accrual or use by employees of earned sick time or that extends other protections to employees.</li> <li>(B) Employers, who provide their employees earned sick time under a paid time off policy or other paid leave policy that is substantially compliant with the accrual requirements for earned sick time under <u>section 4-19-13</u> and may be used by the employee for the same purposes and under the same conditions as earned sick time under <u>section 4-19-14</u>, are not required to provide additional earned sick time.</li> <li>(C) Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may donate unused accrued earned sick time to another employee.</li> <li>(D) Nothing in this chapter shall be construed to prohibit an employer from advancing earned sick time to an employee prior to accrual by such employee.</li> </ul> |
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| <b>Notice and Posting</b>                         | <p>(A) An employer shall display a sign describing the requirements of this Chapter in at least English and Spanish in a conspicuous place or places where notices to employees are customarily posted. An employer is not required to post such signage until the City of Austin makes such signage available publicly on its website.</p> <p>(B) EEO/FHO shall prescribe by rule the size, content, and location of signs required under Subsection (A) of this Section.</p> | <p>(A) The EEO/FHO shall, by the effective date of this chapter, publish and make available to employers, in all languages spoken by more than five (5) percent of the workforce in the city (as calculated by the EEO/FHO), notices suitable for posting by employers in the workplace informing employees of their rights under this chapter. The EEO/FHO shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than five (5) percent of the city workforce.</p> <p>(B) Every employer shall post, in a conspicuous place at any workplace or job site where any employee works, the notices required by subsection (A). Every employer shall post this notice in English, and any language spoken by at least five (5) percent of the employees at the workplace or job site if published by the EEO/FHO.</p> <p>(C) An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter.</p> |
| <b>Employer Succession</b>                        | Not directly mentioned in proposed ordinance.  | When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all accrued earned sick time accrued but not used when employed by the original employer, and are entitled to use all accrued earned sick time previously accrued but not used.   |
| <b>Voluntarily Exchange Hours or Trade Shifts</b> | Not directly mentioned in proposed ordinance.  | <p>(A) Nothing in this chapter shall be construed to prohibit an employer from establishing a policy whereby employees may voluntarily exchange hours or trade shifts.</p> <p>(B) Nothing in this chapter shall be construed to prohibit an employer from establishing an incentive program whereby employees are incentivized to exchange hours or trade shifts.</p>   |



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| <b>Termination,<br/>Transfer, Separation.</b> | <p>(K) Neither the amount of earned sick time nor the right to use earned sick time shall be affected by an employee's transfer to a different facility, location, division, or job position with the same employer.</p> <p>(L) An employee who is rehired by an employer within 12 months following separation of employment from that employer may use any earned sick leave available to the employee at the time of separation.</p> | <p>(A) Nothing in this chapter may be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued earned sick time that has not been used.</p> <p>(B) If an employee is transferred to a separate division, entity, or location within the city, but remains employed by the same employer, the employee is entitled to all accrued earned sick time accrued but not used at the prior division, entity, or location and is entitled to use all accrued earned sick time as provided in this chapter.</p> <p>(C) When there is a separation from employment and the employee is rehired within ninety (90) days of separation by the same employer, previously accrued earned sick time that had not been used must be reinstated. An employee is entitled to use accrued earned sick time and accrue additional sick and safe time at the commencement of reemployment.</p> |
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